

Private Law Remedies Against Loot Boxes in Video Games?

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A loot box is a virtual item in a video game that contains a randomised selection of other virtual items that can be used in the game. These virtual items can take different forms, from cosmetic items to items relevant for gameplay progress. In some games, loot boxes can be unlocked by paying real-world money, while in others, loot boxes are opened up using in-game money or as a reward for in-game efforts.

When players of a video game purchase a loot box, they usually do not know which specific virtual items they will receive. As recent psychological research has pointed out, many loot boxes present a number of substantial structural similarities with traditional forms of gambling. This raises the legal question as to whether or not loot boxes are to be categorised as gambling.

It is the province of the national gambling laws to determine whether loot boxes are legally equivalent to gambling. In some countries, the relevant public authorities have investigated whether loot boxes meet the national legal definition of gambling. The outcome of those investigations was divergent. While the Belgian and Dutch authorities, for example, ruled that some loot boxes legally constitute gambling, other authorities such as the French and the British held exactly the opposite.

In our presentation, we will explore whether private law remedies are available for video game players who have purchased loot boxes. This legal question has so far received only sparse attention in the worldwide debate on loot boxes.

Our analysis will be dual. We will first examine whether video game players can claim restitution of the money spent on loot boxes. Such restitution is conceivable when the purchase of a loot box in a video game qualifies as an invalid contract, e.g. because it is tainted by illegality or because the loot box was purchased by a minor. We will then analyse whether video game players can claim damages for the money spent on opening up loot boxes, e.g. in case loot boxes violate the prohibition on unfair commercial practices.

The availability of restitution and damages remedies will be the subject of a comparative analysis. In our presentation, we will opt for jurisdictions in which the gambling authorities have already ruled on the issue of whether or not loot boxes are to be legally classed as gambling, viz. English common law and the civil law in Belgium, France and the Netherlands.

Keywords: online agreements, loot boxes, video games, gambling, illegality, minors, restitution, damages, tort law, unfair commercial practices